

BEFORE THE  
GOVERNING BOARD  
MORENO VALLEY UNIFIED SCHOOL DISTRICT  
RIVERSIDE COUNTY  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force  
Proceeding Involving:

OAH No. 2012030501

CERTAIN CERTIFICATED EMPLOYEES  
OF THE MORENO VALLEY UNIFIED  
SCHOOL DISTRICT WHO RECEIVED  
PRELIMINARY LAYOFF NOTICES FOR  
THE 2012-2013 SCHOOL YEAR,

Respondents.

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Moreno Valley, California, on April 30, 2012.

Melanie A. Petersen and Kerrie E. Taylor, Atkinson, Fagen, Friedman & Fulfrost, represented the Moreno Valley Unified School District.

Carlos Perez, Reich, Adell & Cvitan, represented respondents Alma Abrego; Marisol Acosta; Marcella Agrusa; Danette Aguilar; Brad Allcock; Eliseo Amerzcua; Cheri Arakawa; Kimberly Arcos; Tina L. Arias; Juana Arriaga; Normal Avila; Carrie Balderrama; Joanna Barnett; Anita Barragan; Leah Belote; Maria D. Bennett; Alma Bissot; Julie Blackmon; Desiree Blackstone; Kristen Blades; Mychelle Blandin; Deborah Bocanegra; Kathleen Bransford; Kathren Brooks; Rebecca Buckoff; Traci Bulanek; Tania Cabrera; Silvano Cantu; Nicole Castro; Blanca Chiquito; Shani A. Cigarroa; Heather Clough; Deborah Collins; Cheryl Conder; Norma S. Cordova; Ruben Cota; Jennifer Covington; Brett Crider; Nicole Cross; Patricia Damaze; Randy Dargitz; Grant Dolan; Michelle Dotterer; Daniel P. Dufour; Divina Elbo; Amanda Elkhoury; Patricia Ellis-Greenberg; Teresa Espinosa; Erica Esqueda; Steve Ferreira; Timothy Frinfrock; Andrea Fingerson; Nicole Flicking; Adam Flores; Elizabeth Florida; Donielle Flot; Stephanie Fortini; Michael Gallagher; Loren Gamarra; Sandra E. Garcia; Claudia Garcia-Padilla; Melissa Garrett; Kyle Gerhard; Gina Ghiani; Tiffany Gilmore; Arthur Giovannini; Gregory Giroux; Horacio Gomez; Eloy Gonzalez; Traci Goodrich; Gisela Gracian-Olmos; Christine Graves; Ileana Gutierrez; Jose Guttirez; Michael Gutierrez; Victoria Gutierrez; Jason Gutierrez; Diana B. Hall; Sandra Haro; Cathy Harriman;

Shonia Hayes; Rosalba Henneman; Jacqueline Heredia; Veronica N. Herrera; Adriana Higaldo; Eleanor Duque Holm; Jonathan Helmsman; Susan Hazier; Kristine Huizenga; Michael Hunter; Alejandra Jauregui; Amy Johnson; Aurora Johnson; Tiffani Johnstone; Typasha Jones; Alex Kantola; Janelle Kell; Theodore Kellam; Amanda Kellis; Julie Kim; Stephen Kim; Matthew King; Paul Kopp; Carlos Labrada; Nohemi LaCombe; Frida Lamas; Jennifer Laramie; Amber Largey; Gerald Lauderman; Sharmayne Lawson; Natasha Leacock-Harris; Margarita Leal; Lori Lee; Angelica Lepe; Dawn Lndsey; Jennifer Lindsey; Jeanine Lopez; Stephanie Luddinton; Kathy Maddox; Elsa Magana; Carissa Marin; Lisbeth Martinez; Lorena Medina; Sharon Mendosa; Almario Mendoza, Jr.; Sandra Merletti-Van Damme; April Mertz; Karla Michel; Lorena Michel-Jasso; Matthew Moe; Jessica Molletti; Michelle Montemayor; Sara Montti-Sanchez; Yisel Moreno; Patricia Mota-Cornejo; Estela Munoz-Gomez; Veronica Murga; Linda Nadziejko; Nadakia Neal; Carol A. Nelson; Marlies Nelson; Khola Nevels; Lam Nguyen; Julie Nikniai; Olivia Nunez; Pedro Nuno; Katherine O'Bryan; Joseph Ochoa; Terrence Outlaw; Edma Payne; Jawad Pearson; Isabel Perez; Maria Perez; Melinda Peterson; Brittany Pierce; Kyle Polston; Enedina Ponce-Perez; Linda Prows; Natividad Quintanar; Rachelle Ray; Maria Reynoso; Justin W. Rice; Sherry Rice; Christine Rightnar; Susanna Rodriguez; Gabriela Romo; Daisy Salazar; Gabriela Sanchez; Juan Sanchez; Ruben Sarabia, Jr.; Isaac Saucedo; Darlene Schmittle; Monica Lee Scullion; Curt Sell; Yesenia Serrano; Kelee Shearer; Salma Shehto; Daniel Singer; Cynthia Smith; Allison Soileau; Khunara Sok; Lynn C. Solorio; Jeffrey Soria; Janeia Sotomayor; Deepika Srivastava; Rachel Storch; Kristina Strathman; Cherie Suchan; Kimberly Swanson; Jennifer Tapia; Erika Tellez-Armijo; Anita Thompson; Erika Torres; Zenaida (Paula) Torres; Tera Trotter; Joann Valencia; Jacqueline Vargas; Howard Virgo; Matthew Vaudrey; Arlene Vega; Sandra Vilas; Cheryl Wagner; Denise West Katherine Willers; Eltonia Williams; Stephanie Williams; Lerrie D. Williams-Wyatt; Megan Witt; Veronica Younger-Jones; Carol E. Young; Jennifer Lynette Young; Marissa Zarate; John Ladd Zorn, Jr.; Rosanna Ackerson-Bravo; Brandon Annette; Karina Aragon; Mary Baez; Jennifer Baker; Camille Bates; Katelyn Beaman; Claudine Bond; Bradley Byers; Janice Carter; Robin Charkins; Denise Chavez; Jennifer Dieffenbacher; Le Ann Duong; Jacquelyn Espinosa; Steven Fager; Matthey Fairbanks; James Fenton; Christopher Fuertes; Adrian Garcia; Esmeralda Gonzalez-Tenneco; Jennifer Harahan; Linda Harte; Janet Hernandez; Maria LaBrie; Allison Montejano; Yolanda Mouton; Aimee Porter; Shawnee Vasher; Antonio Vega; Gabriel Vega; Karina Vitelli; Marie Wright; and Kimberly S. Johnson.

The matter was submitted on April 30, 2012.

## FACTUAL FINDINGS

### *The Moreno Valley Unified School District*

1. The Moreno Valley Unified School District is located in Moreno Valley, Riverside County. The District maintains and operates five elementary schools, six middle schools, five comprehensive high schools, and five alternative schools. The District provides services to approximately 36,000 students from preschool through 12<sup>th</sup> grades. The District

employs approximately 3,000 persons, about 1,170 of whom are certificated employees. Employee salaries and benefits comprise about 85 percent of the District's annual expenditures. The District has a projected budget of approximately \$256 million in revenues and \$285 in expenditures for the 2012-2013 school year, resulting in a \$29 million shortfall.

2. The District is governed by an elected five member Board of Education. Judy D. White, Ed.D., is the Board's Chief Executive Officer and the Superintendent of Schools. Henry H. Voros is the Assistant Superintendent of Schools, Human Resources Division. Sharon Bowman is the Director of Human Resources.

### *The Fiscal Crisis*

3. Public schools rely on financing from the State of California. A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board, which has the duty to produce and file a balanced budget with the County Department of Education, must take steps to ensure that financial ends meet if the worst-case financial scenario develops.

California's recent economic problems have had a crippling impact on the Moreno Valley Unified School District and other public school districts. If the District cannot meet its financial obligations, the County Office of Education has the authority to intervene and take over the District's operations.

### *The District's Response*

4. In response to the anticipated budgetary shortfall for the 2012-2013 school year, District administrators reviewed services and staffing. The District embarked upon a program to reduce its budget. Among other matters, the District decided to trim expenditures by reducing or eliminating particular kinds of services provided by credentialed employees.

5. On March 13, 2012, following a review of the District's budgetary situation, financial projections for the 2012-2013 school year, and Assistant Superintendent Voros's recommendation, the Board adopted Resolution No. 2011-12-47, which provides:

WHEREAS, the Governing Board of the Moreno Valley Unified School District has determined that it shall be necessary to reduce or discontinue the particular kinds of services of the District as itemized in Exhibit A at the close of the current school year; and

WHEREAS, it shall be necessary to terminate at the end of the 2011-12 school year, the employment of certain certificated employees of the District as a result of this

reduction or discontinuance in particular kinds of services;

WHEREAS, pursuant to Education Code §44955(c), the Governing Board has determined that for the purpose of assignment and reassignment those persons assigned or reassigned to a position shall possess the necessary credential(s), subject matter authorization(s), certificate(s), and permit(s) in order to comply with all state and federal assignment requirements;

THEREFORE, BE IT RESOLVED that the Superintendent or the Superintendent's designee is directed to send appropriate notices to all employees whose services shall be terminated by virtue of this action. Nothing herein shall be deemed to confer any status or rights upon temporary or categorically funded project certificated employees in addition to those specifically granted to them by statute.

THE FOREGOING RESOLUTION WAS ADOPTED by the Board of Education of the Moreno Valley Unified School District on the 13th day of March 2012.

6. Exhibit A provides:

#### **EXHIBIT A**

Recommended Reduction in 2012-13 Programs/Services for the Moreno Valley Unified School District

The Superintendent recommends that the Governing Board adopt a resolution to reduce the programs and services for 2012-13 as follows:

<b>Item</b>	<b>Job Title</b>	<b>FTE</b>
1.	Art	5.00
2.	Business	1.00
3.	Categorical Funded Positions	
4.	Counselors	10.00
5.	Cmptr Based	1.00
6.	EL Specialist	3.00
7.	ELA	1.00
8.	English/Math Coach	1.00

9.	Read 180	1.00
10.	Title 1	1.00
11.	Cal-Safe	0.60
12.	Computer	3.00
13.	Consumer Science	2.00
14.	Dance	1.00
15.	ELD	1.00
16.	Elementary	119.00
17.	English	36.00
18.	French	2.00
19.	Independent Study	2.00
20.	Industrial Tech/Engineering	1.00
21.	Math	42.00
22.	Music	3.00
23.	Physical Education	12.00
24.	ROTC Instructors	2.00
25.	Science (Bio/Life)	3.00
26.	Science (Chem./Physics)	2.00
27.	Science (Earth)	3.00
28.	Science (General)	8.00
29.	Science (Health)	5.00
30.	Sixth Grade	27.00
31.	Social Science	24.00
32.	Spanish	6.00
<b>TOTAL</b>		<b>328.60</b>

#### *The Particular Kinds of Services*

7. The services identified in Exhibit A were the kinds of services that could be reduced under the Education Code. The Board's enactment of Resolution No. 2011-12-47 was neither arbitrary nor capricious; its enactment was well within the Board's discretion; no particular kind of service was lowered to a level below that mandated by state or federal law; the enactment of Resolution No. 2011-12-47 related solely to the economic crisis, the Board's duty to balance the budget, and was in the best interest of the District and the students thereof.

#### *The District's Seniority List*

8. The District maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees retire, resign, or otherwise become separated from service. The seniority list is a spreadsheet that is organized from the District's most senior certificated employee to the most recently hired certificated employee. The list contains each employee's number, seniority date (the first paid date of service with the district), the employee's name, the employee's assignment, the

credentials the employee holds, the school site where the employee provides service, and the employee's status (permanent, probationary, temporary or otherwise).

9. When it became apparent that a reduction in force might become necessary, the District forwarded the seniority list to all school sites and requested employees to review it and make any corrections. The seniority list was also posted on the District's website. If an employee had a question or additional information, it was verified and the seniority list was updated or corrected as required. The updated seniority list was used to determine who should and should not receive a preliminary layoff notice.

#### *Tie-Breaking Criteria*

10. In order to determine the order of termination of employees who rendered paid service to the District on the same date, the Board enacted Resolution No. 2011-12-49. That resolution provides:

WHEREAS, pursuant to provisions of Education Code §44955, the Board of Education is required to determine the District needs should it become necessary to determine the order of termination for employees who first rendered paid service to the District on the same day.

WHEREAS, for the 2012-13 school year only, to meet the requirements of Education Code §44955, the Board of Education determines the needs of the District and the students by establishing the following tie-breaking criteria:

WHEREAS, the following rating system shall be applied in determining the order of termination of certificated employees:

A. Credentials and credentialed experience to teach or serve in a particular program or provide a particular service of need by the district (English, Foreign Language, Math, Science). Rating: +1 per credential; +1 per year of credentialed experience.

B. Special programs credential and experience to teach (bilingual, special education). Rating: +1 per credential; +1 per year of experience.

C. Years of experience employed as a full-time K-12 certificated employee in a public school. Rating: +1 per year.

D. Number of supplementary authorizations. Rating: +1 per supplementary authorization.

E. Number of valid teaching and /or special service credentials. Rating: +1 per credential.

F. Earned degrees beyond the BA/BS level. Rating: +1 per degree.

G. Preliminary vs. Clear/Life Credentials. Rating: +1 per preliminary credential; +2 per clear/life credential.

### **TIE-BREAKING PROCEDURE**

THEREFORE, BE IT RESOLVED, in the event that common day hires have equal qualifications based on the application of the above criteria, the District will then break ties by utilizing a lottery.

PASSED AND ADOPTED this 13th day of March 2012.

#### *The Issuance of Preliminary Layoff Notices/Jurisdictional Documents*

11. Using the updated seniority list, Resolution No. 2011-12-47, the tie-breaking criteria set forth in Resolution No. 2011-12-49, and considering all positive attrition, the District's administrative staff identified those employees who should receive preliminary layoff notices and those who should not. Whenever an employee providing a particular kind of service held a position that was reduced eliminated by Resolution No. 2011-12-47 and was identified as being in line to receive a preliminary layoff notice, that employee's seniority and credentials were carefully examined to determine if that employee had the seniority, credentials, and competence to "bump" a junior employee and assume the position held by the more junior employee.

12. The District timely served respondents, each of whom was a certificated employee, with notice that the District's Superintendent had recommended that the respondent not be reemployed in the upcoming 2012-2013 school year. The District timely served respondents with an Accusation, Statement to Respondent, and a blank Notice of Defense form, accompanied by relevant sections of the Education Code and Government Code. These documents were filed and served by the District's Superintendent in her official capacity.

The District considered all respondents served with the Accusation and related documents to be entitled to a hearing, regardless of whether the respondent timely filed a Notice of Defense.

The District served respondents with a Notice of Hearing, setting the hearing in this reduction in force proceeding for April 30 and May 1, 2012, to commence each day at 10:00 a.m.

### *The Administrative Hearing*

13. On April 30, 2012, the record in the reduction in force proceeding was opened.

The District rescinded and withdrew the preliminarily layoff notices served on respondents Meagan Witt (seniority number 974); Diana B. Hall (seniority number 977); Maria Wright (seniority number 975); Zenaida (Paula) Torres (seniority number 1206); Nicole Phillips (seniority number 1305); Cathy Harriman (seniority number 1330); and Paul Kopp (seniority number 1315). There was no objection to the rescission and withdrawal.

Jurisdictional documents were introduced; the caption was amended; opening comments were given by an attorney for the District; a written stipulation concerning jurisdictional matters and several exhibits was received; sworn testimony was taken; documentary evidence was received; Director Bowman testified about the budgetary crisis, the impact of that crisis on the District's operations, the layoff process, the seniority list, the bumping of senior employees who were credentialed and competent (NCLB compliant in the subject matter to be taught and holding an appropriate EL authorization if required) into positions held by more junior employees, and the District's determination to retain the services of Debra McQuain. Assistant Superintendent Voros testified about the temporary employees inclusion in the reduction in force proceeding, the prohibition against retaining temporary employees over permanent and probationary employee and the release of temporary employees from service, and the skipping process. Following the taking of evidence, closing comments were given; the record was closed; and the matter was submitted.

### *Skipping*

14. Debra McQuain (seniority number 1490) holds a clear single subject credential in Physical Education and has a seniority date of August 21, 2007. She teaches dance at Valley View High School. She is a permanent employee and is the most senior employee who teaches dance. Ms. McQuain is not the most senior Physical Education instructor, and the District wishes to retain her in the 2012-2013 to teach five periods of dance and choreography. Ms. McQuain has taught dance and choreography at the District for many years, has worked with the District's dance teams, and has additional training and coursework in choreography that no other employee possesses. The District is concerned that its failure to retain Ms. McQuain's services will result in a decline in the District's dance programs. No certificated employee senior to Ms. McQuain has the special training and



experience in dance and choreography that is necessary to teach these courses. There was no testimony that contradicted the testimony of Director Bowman and Assistant Superintendent Voros concerning the District's need to retain Ms. McQuain to teach dance and choreography as a result of her special education and training that no other employee possesses. Skipping Ms. McQuain is reasonable under the circumstances.

#### *The Rescission of Seven Preliminary Layoff Notices*

15. Before the taking of evidence, the District rescinded and withdrew the preliminary layoff notices previously served on respondents Meagan Witt, Diana B. Hall, Maria Wright, Zenaida (Paula) Torres, Nicole Phillips, Cathy Harriman, and Paul Kopp. As to Ms. Witt and Ms. Hall, the rescission was due to application of a tie-breaker. As to Ms. Wright, Ms. Torres, Ms. Phillips, Ms. Harriman, and Mr. Kopp, the rescissions were due to the lawful capacity of each of these individuals to move from teaching in elementary school to teaching in middle school because each of them possessed the seniority, credentials, and qualifications to teach in the middle school positions.

The District's decision to rescind and withdraw the preliminary layoff notices previously served on these employees is sustained and upheld.

#### *The Reduction in Force Proceeding*

16. The enactment of Resolution No. 2011-12-47 was the result of a budgetary crisis; it was enacted in good faith; the tie-breaking criteria set forth in a separate resolution were reasonable and were applied in an evenhanded manner; enacting the resolutions was in the best interest of the District and its students. The District used seniority, credentials, and competence as the basis for "bumping" and retaining the services of senior, competent, and appropriately credentialed employees to provide services that were provided by more junior employees. The District demonstrated good cause to support the skipping of Ms. McQuain. The District complied with all jurisdictional requirements.

### LEGAL CONCLUSIONS

#### *Statutory Authority - Reduction in Force Proceedings*

1. Education Code section 44949 provides in part:
  - (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶] . . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the

charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render . . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that

the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

### *Jurisdiction*

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondents.

### *The Reduction of Particular Kinds of Services*

4. A school board may determine whether a particular kind of service should be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) A school board's decision to reduce or discontinue a particular kind of service need not be tied in with any statistical computation. It is within the discretion of a school board to determine the amount by which it will reduce or discontinue a particular kind of service as long as the school district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

### *Competence*

5. The Education Code leaves to a school board's discretion the determination of whether an employee must also be competent to be employed in a vacant position in addition to possessing seniority. The term "competent" relates to an individual's specific skills or qualifications, including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.)

### *Seniority, Bumping, Skipping*

6. Seniority: Under Education Code section 44845, seniority is determined by the date a certificated employee "first rendered paid service in a probationary position."

7. Education Code section 44846 provides in part: "The governing board shall have power and it shall be its duty to correct any errors discovered from time to time in its records showing the order of employment."

8. The Statutory Scheme: Education Code section 44955, the economic layoff statute, provides in subdivision (b), in part:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Essentially this statutory language provides “bumping” rights for senior certificated and competent employees, and “skipping” authority to retain junior employees who are certificated and competent to render services which more senior employees are not.

9. Bumping: The district has an obligation under Section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 136-137.)

10. Skipping: Subdivision (d)(1) of Section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at pp. 134-135.) There is nothing in the statute that requires such special needs be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Id.*, at p. 138.)

School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

#### *Cause Exists to Give Notice to Certain Employees*

11. As a result of the Governing Board’s lawful reduction of particular kinds of service, cause exists under the Education Code to authorize the District to give final notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the District for the 2012-2013 school year.

## *Determination*

12. The charges set forth in the Accusation were sustained by a preponderance of the evidence except as otherwise stated herein. Good cause supported the District's skipping of one certificated employee. The District's rescission and withdrawal of the preliminary layoff notices serviced on seven certificated employees was appropriate, based upon objective standards, and was in the best interest of the District and the students thereof. The Board's enactment of the resolutions applicable in this reduction in force proceeding was related to the welfare of the District and its pupils. The District made necessary assignments and reassignments in such a manner that the most senior credentialed employees were retained to render services that their seniority and qualifications entitled them to provide.

## RECOMMENDATION

It is recommended that the Governing Board of the Moreno Valley Unified School District issue final layoff notices to the following certificated employees:

Alma Abrego	Deborah Bocanegra	LeAnn Duong
Rosanna Ackerson-Bravo	Claudine Bond	Amanda Elkhoury
Marisol Acosta	Kathleen Bransford	Patricia Ellis-Greenberg
Marcella Agrusa	Kathren Brooks	Teresa Espinosa
Danette Aguilar	Rebecca Buckhoff	Jacquelyn Espinoza Rathbun
Brad Allcock	Traci Bulanek	Erika Esqueda
Eliseo Amezcua	Bradley Byers	Steven Fager
Brandon Annette	Tania Cabrera	Matthew Fairbanks
Karina Aragon	Silvano Cantu	James Fenton
Cheri Arakawa	Janice Carter	Steven Ferreira
Kimberly Arcos	Nicole Castro	Jamie Fiedler
Tina Arias	Robin Charkins	Timothy Finfrock
Juana Arriaga	Denise Chavez	Andrea Fingerson
Norma Avila	Blanca Chiquito	Nicole Flicking
Mary Baez	Shani Cigarroa	Adam Flores
Jennifer Baker	Heather Clough	Elizabeth Florido
Carrie Balderrama	Deborah Collins	Donielle Flot
Joanna Barnett	Cheryl Conder	Stephanie Fortini
Anita Barragan	Norma Cordova	Michael Francis
Camille Bates	Ruben Cota	Christopher Fuerte
Katelyn Beaman	Jennifer Covington	Marisol Gallegos
Leah Belote	Brett Crider	Loren Gamarra
Maria D. Bennett	Patricia Damaze	Adrian Garcia
Alma Bissot	Randy Dargitz	Sandra E. Garcia
Julie Blackmon	Jennifer Dieffenbacher	Melissa Garrett
Desiree Blackstone	Grant Dolan	Kyle Gerhard
Kristen Blades	Michelle Dotterer	Gina Ghiani
Mychelle Blandin	Daniel Dufour	Tiffany Gilmore

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Jose Gutierrez  
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Aurora Johnson  
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Antonio Vega  
Arlene Vega  
Gabriel Vega  
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Xaviera Villegas  
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Lerrie Williams Wyatt  
Veronica Yonker Jones  
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Dated: May 1, 2012

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Administrative Law Judge  
Office of Administrative Hearings